

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)	
)	WC Docket No. 14-93
Connect America Fund)	WC Docket No. 10-90
)	

REQUEST FOR WAIVER OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox") hereby requests that the Commission waive its rules governing challenges to the unserved areas determination for Phase II of the Connect America Fund ("CAF") to permit it to challenge census blocks in two narrow circumstances: (1) where its billing and network databases are not a precise match and (2) where it has built facilities to planned, but unfinished residential developments. For the reasons described below, such a waiver would be justified and should be granted.

I. Introduction

Cox is a broadband, communications, and entertainment company providing advanced digital video, Internet, telephone and home security services over its network. Cox serves approximately 6 million residential and commercial customers and operates in hundreds of communities in 18 states.

Since 1996, Cox has invested more than \$24 billion in infrastructure upgrades to deliver video, phone and high-speed Internet service to homes and businesses in its service areas. More than 99.5 percent of the households in Cox service areas have access to Cox high-speed Internet, at some of the fastest broadband speeds available in the nation. Throughout all Cox service areas, Cox offers broadband service with speeds that well exceed 4 Mbps/1 Mbps, the minimum

threshold to be deemed “served” for purposes of the Connect America Fund (CAF) Phase II price cap carrier offer of statewide support.

Cox seeks a waiver of the requirement that a provider challenging CAF Phase II funding be able to identify a current or past customer in census blocks that it otherwise has facilities, constructed without subsidy, that are readily available to provide service . As indicated below, there are limited circumstances where this occurs. First, Cox requests a waiver in situations in which the process used to identify census blocks for its challenge did not result in an exact match between its billing and network deployment databases. Second, Cox requests a waiver for specific locations where it has participated in underground joint trench opportunities and constructed communications facilities in planned residential developments that have yet to be finished. In these cases, Cox cannot produce current or previously served customer information as required under the very narrow CAF II challenge requirements.

In both circumstances, Cox is fully prepared to provide service in the census blocks and meets all of the other criteria for CAF Phase II challenges, including the speed, usage allowance, latency and price requirements, and does not receive any subsidies for providing service to those areas.¹ Thus, if the Commission grants the requested waiver, each of the affected census blocks should be included in Cox’s challenge. A Form 505 listing both sets of census blocks is attached to this request as Exhibit 1.

¹ Cox has demonstrated it meets these requirements in its CAF Phase II challenge filing, submitted contemporaneously with this waiver request, and the statements in that filing apply equally to the census blocks covered by this request. *See* Connect America Fund Phase II Challenge of Cox Communications, Inc., WC Docket No. 14-93, WC Docket No. 10-90, filed Aug. 14, 2014 (the “Cox Phase II Challenge”) at 6-9. Cox requests that the information on these requirements in the CAF Phase II challenge filing be incorporated into this request for waiver by reference.

II. The Standard for Granting Waiver Requests

The Commission grants waivers for “good cause shown.”² The Commission will grant waivers when “(a) the particular facts make strict compliance inconsistent with the public interest, (b) special circumstances warrant a deviation from the general rule, and (c) such deviation will serve the public interest.”³ In evaluating waiver requests, the Commission considers, among other things, whether a waiver will result in “more effective implementation of overall policy” than enforcing its rule as written.⁴

III. Cox’s Process for Identifying Census Blocks Subject to Challenge

Cox has described its process for identifying census blocks subject to challenge in detail in the Cox Phase II Challenge.⁵ In brief, that process involves the following steps:

- Cox narrowed the list of census blocks referenced in the Wireline Competition Bureau’s June 30, 2014 Public Notice to limit its review to areas where Cox provides service.
- Cox then used its node boundary maps to determine the actual overlaps between its network and the census blocks on the Commission’s unserved areas list, and then to locate serviceable addresses in the overlap areas. Only serviceable addresses were considered in the next step.
- Cox used its billing database to determine whether a customer currently was purchasing relevant services or had purchased relevant services in the past.

The census blocks subject to this request were identified in the third step of this process, after Cox determined whether or not there were serviceable addresses in each block.⁶ These census blocks were not included in the Cox Phase II Challenge.

² 47 C.F.R. § 1.3; *see also* Connect America Fund, *Order*, WC Docket No. 10-90, CC Docket No. 01-92, FCC 14-21 (rel. Aug. 7, 2014) (granting partial waiver of recovery mechanism rules for revenues unrecoverable due to bankruptcy).

³ *August 7 Waiver Order* at 6, *citing* *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ *August 7 Waiver Order* at 6, *citing* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159, *Northeast Cellular*, 897 F.2d at 1166.

⁵ Cox Phase II Challenge at 2-6.

⁶ A serviceable address is one actually passed by Cox facilities.

IV. The Commission Should Waive the Actual Service Requirement for Census Blocks with Imperfect Matches

The first category of census blocks covered by this waiver request consists of blocks where the process used in developing Cox's challenge did not result in an exact match between its billing and network deployment databases. Cox has identified 506 census blocks in this category. A waiver is justified for at least two reasons.

First, imperfect matches typically are the result of differences in how data is entered into Cox's systems at different times, and do not represent locations where Cox does not provide service. For instance, one common type of imperfect match occurs when Cox deploys its facilities at a location while a development is under construction and that location is added to Cox's serviceable address database before street numbers are assigned.⁷ When the customer purchases service, Cox's billing database includes the correct street number. As a result, the serviceable address and the billing address do not match, and the customer address falls out of the Cox process for identifying census blocks served by Cox. In practice, however, Cox has customers in the census blocks. Thus, while the matches between Cox's network deployment and billing databases may not be perfect, the available information provides probative evidence that the standards described in the Public Notice have been met.

Second, Cox's process ensures that it has serviceable addresses within a census block before that block even reaches the stage where the search for specific customers begins. These serviceable addresses are addresses where Cox will provide service on its standard terms and conditions, *i.e.*, with speeds, latency, usage allowances and prices consistent with the Commission's requirements for unserved area challenges. Thus, these are areas where, even if a

⁷ In some cases, such as when a local jurisdiction rennumbers streets for 911 purposes, there may have been a street number at the time the location was added to the serviceable address database, but that number no longer matches the current number.

specific address match for an existing or former customer cannot be found, customers upon request plainly have the ability to obtain Cox's broadband service.

Given these facts, the census blocks in Cox's territory with imperfect matches should be treated as being served and should be removed from the list of blocks eligible for CAF Phase II funding. Permitting carriers to receive CAF Phase II funding for these areas would be inconsistent with the Commission's public interest goals of providing funding to areas that are unserved and of making efficient use of the money in the Connect America Fund. Indeed, excluding these census blocks from funding would result in "more effective implementation of overall policy" than including them.⁸ Moreover, "strict compliance" with the standards would meet the Commission's goals less effectively than the minor "deviation from the general rule" that a waiver would create.⁹ Consequently, a waiver should be granted as to these census blocks.

V. The Commission Should Waive the Actual Service Requirement for Census Blocks with Unfinished Subdivisions

Cox has to date identified 10 census blocks where it has deployed facilities into subdivisions that were never finished by the initial developers before houses were constructed.¹⁰ These census blocks are located in the western part of the country, in areas where there was significant housing growth before the 2008 recession. Developers laid out the subdivisions, built roads and entered into joint trenching arrangements with utilities and other companies so that facilities would be in place when the houses were completed. However, once this infrastructure was in place, the houses were never finished.

⁸ *August 7 Waiver Order* at 6, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159, *Northeast Cellular*, 897 F.2d at 1166.

⁹ *August 7 Waiver Order* at 6, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ Cox's research indicates that there may be other census blocks in its service area that also could fall into this category, but for the purposes of this waiver request, it is asking the Commission only to exclude the census blocks identified in Exhibit I.

In each of the locations identified as falling into this category, Cox completed its obligations under the joint trenching agreements and extended facilities to the planned subdivision. These facilities were constructed without any subsidies, based on the expected return from customers in the planned subdivisions. As a result, Cox would be ready, willing and able to serve the subdivision if there were any customers, and would do so on the same terms and conditions as in other parts of the same market where it already provides service.

One example of such an abandoned development is located in census block 040210002081022 in Pinal County, Arizona. As shown in the two images attached to this request as Exhibit 2, streets were laid out and paved for the development in this census block, but no houses were constructed. However, Cox has deployed facilities into the entire area covered by the unfinished subdivision, and would serve any house that would be constructed in the future.¹¹

Waiver of the actual service requirement for these areas is justified for three reasons. First, the reason that Cox does not have any actual customers in these areas is that there are no customers to serve. If there were customers, Cox would be able to serve them and would serve them upon request. In other words, the reason that Cox does not have any actual customers has nothing to do with the availability of broadband service in these census blocks.

Second, there is no benefit to subsidizing a second service provider in these census blocks because an unsubsidized competitor already is committed to serving any customers who may appear those areas. As the Commission noted in the *Transformation Order*, “limiting support to only those areas that lack an unsubsidized providers” is important to “advanc[ing] the

¹¹ Indeed, given Cox’s substantial capital investment in bringing facilities to this and other abandoned subdivisions, it would be economically irrational not to serve any houses that ultimately are built.

principle of competitive neutrality.”¹² Granting a subsidy to a second provider when Cox already is ready, willing and able to serve these census blocks would be contrary to the competitive neutrality principle.

Third, maintaining eligibility for census blocks with unfinished subdivisions would be contrary to the Commission’s intent to maximize the efficiency of the Connect America Fund. Deploying additional, subsidized facilities in these census blocks will create no benefit to the public, since nobody lives there. Moreover, to the extent that an eligible carrier would take advantage of the opportunity to shift funding from these unpopulated areas to other census blocks it would receive an unintended benefit of an additional subsidy for those other census blocks.¹³

Each of these factors justifies granting a waiver from the actual service requirement for the census blocks identified by Cox as being in unfinished subdivisions where Cox has deployed facilities. Providing funding for these census blocks is not necessary for “effective implementation of overall policy”; indeed, excluding them is more consistent with the Commission’s policies favoring competitive neutrality and efficient expenditure of money in the Connect America Fund.¹⁴ Further, the “particular facts” relevant to these census blocks show that providing funding for these blocks will not result in new service to unserved populations, but rather that it would result either in deployment of duplicative facilities to places where nobody lives or works or in diversion of the funds to other areas. It is evident that these facts constitute “special circumstances [that] warrant a deviation from the general rule.”¹⁵

¹² Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17731 (2011).

¹³ *Id.* at 17729 n. 279.

¹⁴ *August 7 Waiver Order* at 6, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159, *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *August 7 Waiver Order* at 6, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

VI. Conclusion

For all the reasons described above, the Commission should grant the requested waiver and exclude the census blocks listed on the attached Form 505 from CAF Phase II funding.

Respectfully submitted,

COX COMMUNICATIONS, INC.

/s/

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August 14, 2014

Exhibit 1

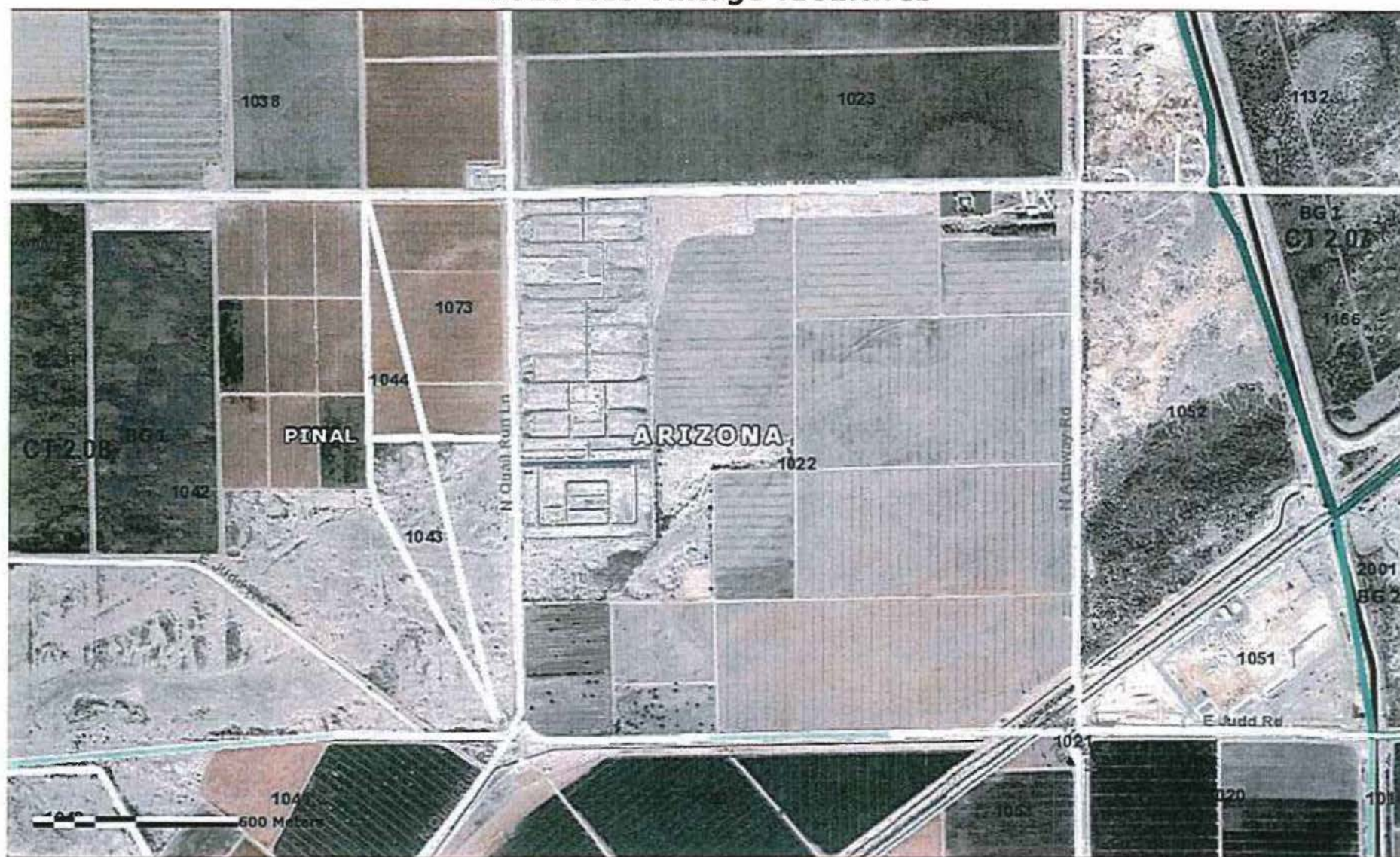
Form 505

Form 505 is submitted with the electronic filing of this request as a separate document.

Exhibit 2

Images of Census Block 040210002081022, Pinal County, Arizona

2013 ACS Vintage TIGERweb



Legend

- | | | |
|--|---|--|
|  States |  Census Tracts |  2010 Census Blocks |
|  Counties |  Census Block Groups | |

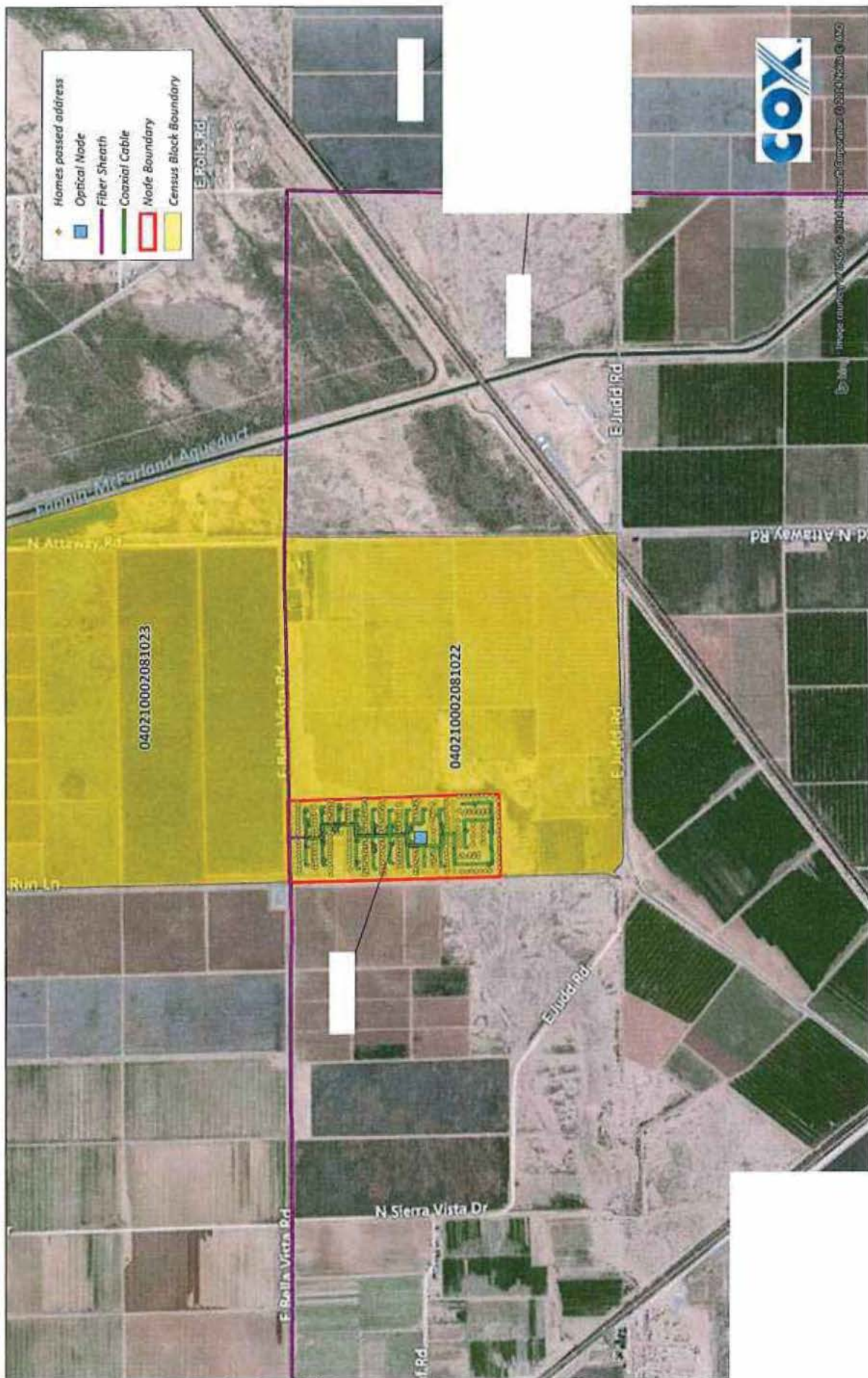


Exhibit 3

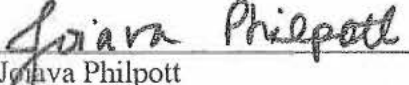
Declaration of Joiava Philpott

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1. My name is Joiava Philpott. I am Vice President, Regulatory Affairs at Cox Communications, Inc. ("Cox"). I am making this declaration in connection with Cox's request for a waiver of the requirement to provide actual service for CAF Phase II challenges (the "Request").
2. In my position as Vice President, Regulatory Affairs, I am responsible for Cox's compliance with all regulatory obligations at the state and federal level, including universal service rules. My duties include matters relating to Cox's evaluation of and response to the Commission's initial list of unserved census blocks that are eligible for Connect America Fund Phase II funding.
3. I have reviewed the Request and the facts described in the Request concerning Cox, Cox's evaluation of the list of unserved census blocks and Cox's deployment of facilities in those census blocks. The Request and those facts are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 14, 2014


Joiava Philpott
Vice President, Regulatory Affairs